IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

(Attorney Docket № 14449US02)

In re:	Jeyhan Karaoguz et al
Serial No.	10/675,903
Filed:	September 30, 2003
For:	Quality of Service Support In a Media Exchange Network
Examiner:	Tri H. Phan
Art Unit:	2616
Conf. No.	6132

Electronically filed on

January 22, 2008

APPEAL BRIEF

Mail Stop Appeal Brief – Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This is an appeal from an Office Action mailed on August 6, 2007 ("Final Office Action"), in which claims 1-31 were finally rejected. The Applicant respectfully requests that the Board of Patent Appeals and Interferences ("Board") reverses the final rejection of claims 1-31 of the present application. **The Applicant notes that this Appeal Brief is timely filed within the period for reply that ends on January 20, 2008. Please note that since the 20th was a Sunday, and the 21st was a Federal holiday (Martin Luther King Day), this Appeal Brief is being timely filed on January 22, 2008.**

REAL PARTY IN INTEREST
(37 C.F.R. § 41.37(c)(1)(i))

Broadcom Corporation, a corporation organized under the laws of the state of California, and having a place of business at 5300 California Avenue, Irvine, California 92617, has acquired the entire right, title and interest in and to the invention, the application, and any and all patents to be obtained therefor, as set forth in the Assignment recorded at Reel 014199, Frame 0985 in the PTO Assignment Search room.

RELATED APPEALS AND INTERFERENCES
(37 C.F.R. § 41.37(c)(1)(ii))

The Appellant is unaware of any related appeals or interferences.

STATUS OF THE CLAIMS
(37 C.F.R. § 41.37(c)(1)(iii))

Claims 1-31 are under final rejection. Pending claims 1-31 are the subject of this appeal. The text of the pending claims is provided in the Claims Appendix.

STATUS OF AMENDMENTS
(37 C.F.R. § 41.37(c)(1)(iv))

The Applicant has not amended any claims subsequent to the final rejection of claims 1-31 mailed on August 6, 2007.

SUMMARY OF CLAIMED SUBJECT MATTER
(37 C.F.R. § 41.37(c)(1)(v))

Various aspects of the invention are illustratively described in the Specification of the present application in, for example, "Brief Summary of the Invention" section in pages 4-6 and in the "Detailed Description of the Invention" section in pages 9-28. Aspects of the invention may be found in a method and system for controlling a transfer of media content in a communication network. *See* the present application, page 9, lines 1-2; FIG. 2.

Claim 1 discloses a method for "controlling a transfer of media content in a communication network" that may comprise "receiving an input specifying at least one media file for transfer via a communication channel in the communication network." *See id.* at page 9, lines 2-5. The method may further comprise "causing a display of a plurality of quality of service options corresponding to said at least one media file for selection by a remote user." *See id.* at page 9, lines 18-25. The method may additionally comprise "receiving a quality of service selection specifying at least one of said plurality of quality of service options." *See id.* at page 9, lines 5-7. The method may also comprise "transferring said at least one media file via said communication channel utilizing said quality of service selection." *See id.* at page 9, lines 7-9.

Claims 2-10 are dependent upon claim 1.

Claim 11 discloses "a computer-readable medium having stored thereon a computer program having at least one code section for controlling transfer of media content in a communication network, the at least one code section being executable by

a machine for causing the machine to perform [the] steps" described above. *See id.* at page 27, line 14 to page 28, line 2.

Claims 12-20 are dependent upon claim 11.

Claim 21 discloses a "system for controlling a transfer of media content in a communication network." *See id.* at page 26, lines 11-12. The system may comprise "at least one processor that receives an input specifying at least one media file for transfer via a communication channel in the communication network." *See id.* at page 26, lines 12-14. The system may also comprise "said at least one processor causing a display of a plurality of quality of service options corresponding to said at least one media file for selection by a remote user." *See id.* at page 27, lines 6-13. The system may further comprise "said at least one processor receives a quality of service selection specifying at least one of said plurality of quality of service options." *See id.* at page 26, lines 14-16. The system may additionally comprise "said at least one processor transfers said at least one media file via said communication channel utilizing said quality of service selection." *See id.* at page 26, lines 16-18.

Claims 22-31 are dependent upon claim 21.

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL (37 C.F.R. § 41.37(c)(1)(vi))

I. The claims 1-5, 7-15, 17-25, and 27-31 have been rejected under 35 U.S.C. 102(b) as being anticipated by Nakatsuyama, Takashi (US 6,253,246; hereinafter referred to as "Nakatsuyama"). *See* Final Office Action at page 2.

II. The claims 1-7, 10-17, 20-27, and 30-31 have been rejected under 35 U.S.C. 102(a) as being anticipated by Radford et al. (US 2002/0144276; hereinafter referred to as "Radford"). *Id.* at 5.

III. The claims 6, 16, and 26 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Nakatsuyama. *Id.* at 8.

IV. The claims 8-9, 18-19, and 28-29 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Radford in view of Nakatsuyama. *Id.* at 9.

ARGUMENT
(37 C.F.R. § 41.37(c)(1)(vii))

The claims 1-31 in the "GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL" section above are the same claims rejected in an Office action mailed on January 17, 2007 ("January Office Action"), and in the Final Office Action. The Applicant respectfully traverses the rejections of the claims 1-31 at least based on the following arguments made in response to the January Office Action and in the Pre-Appeal brief filed by the Applicant on November 6, 2007.

I. Nakatsuyama Does Not Anticipate Claims 1-5, 7-15, 17-25, and 27-31

The Final Office Action rejected claims 1-5, 7-15, 17-25, and 27-31 under 35 U.S.C. 102(b) as being anticipated by Nakatsuyama. Page 2.

A. Rejection of Independent Claims 1, 11, and 21

The Applicant respectfully submits that Nakatsuyama does not disclose all the elements of the independent claims 1, 11, and 21. For example, the Final Office Action states that in regard to claims 1, 11, and 21, Nakatsuyama discloses the portion of claim 1 that states "causing a display of a plurality of quality of service options corresponding to [said] at least one media file for selection by a remote user" in figure 2, col. 2, lines 30-32, col. 5, lines 5-67. Page 4. However, Nakatsuyama does not teach the claim element quoted above.

For example, column 2, lines 30-32 of Nakatsuyama discloses "means for selectively receiving a desired data from the data storing means according to a request

from a terminal unit located in a remote place." This clearly does not disclose "causing a display of a plurality of quality of service options corresponding to said at least one media file for selection by a remote user."

Column 5, lines 5-67 in Nakatsuyama is with regard to figure 2. Neither does this text disclose "causing a display of a plurality of quality of service options corresponding to said at least one media file for selection by a remote user." For example, in column 5, lines 5-20, Nakatsuyama states that the controller 16, which is a part of the data receiver 10 at the remote site, controls the information to be sent to the data transmitter 20. Nakatsuyama further discusses entering information via the display screen 15a (as shown in figure 2). Column 5, lines 24-51. This is clearly not "causing a display of a plurality of quality of service options corresponding to said at least one media file for selection by a remote user."

The Applicant was not able to find in Nakatsuyama any disclosure of "causing a display of a plurality of quality of service options corresponding to said at least one media file for selection by a remote user." Accordingly, the Applicant respectfully submits that, at least for the reasons presented, claim 1 is not anticipated by Nakatsuyama.

Since claims 11 and 21 have language similar to claim 1, and claims 1, 11, and 21 are rejected using the same argument, the Applicant respectfully submits that the claims 11 and 21 are also not anticipated by Nakatsuyama. Additionally, the claims 2-5 and 7-10, 12-15 and 17-20, and 22-25 and 27-31 depend from the claims 1, 11, and 21, respectively.

Based on at least the foregoing, the Applicant believes the rejection of the claims 1-5, 7-15, 17-25, and 27-31 under 35 U.S.C. § 102(b) has been overcome and respectfully requests that the rejection be withdrawn.

The Final Office Action includes additional text in the first full paragraph of page 3 that was not present in the January Office Action. However, since this text is used to argue the Examiner's position in the "Response to Amendment/Arguments" section, the Applicant will rebut this in the next section of this brief.

The Applicant reserves the right to argue additional reasons for the allowability of claims 1, 11, and 21.

B. Examiner's Response to Arguments in the Final Office Action

The Final Office Action states that Nakatsuyama discloses "causing a display of a plurality of quality of service options for selection by a remote user" in column 5, lines 50-51. However, the Applicant respectfully submits that lines 50-51 need to be read in context of Nakatsuyama column 5, lines 5-38.

Lines 5-23 in Nakatsuyama state that various information, including the media file name, and data quality information should be transferred to the server. Lines 24-38 state that the various information should be entered "after start-up of the control program ... there will appear on the display screen 15a of the monitor a content name input field 2 for entry of a content name, a quality setting field 3 for setting of the quality of a requested data to be served ... a transfer time setting field 4 for setting of the transfer time ..., and a genre select field 5 for selection of the genre of the requested data to be served from the

data transmitter 20." It is clear that Nakatsuyama discloses displaying the quality of service options **prior to** the media file name being entered or identified.

However, the Applicant's claim states "... **receiving an input specifying at least one media file for transfer** via a communication channel in the communication network; causing a display of a plurality of quality of service options corresponding to **said at least one media file** for selection by a remote user...." The media file refers to an antecedent basis in the previous element. That is, "an input specifying at least one media file" is received, and then the "quality of service options **corresponding to said at least one media file"** are caused to display. In other words, unlike Nakatsuyama, in Applicant's claim 1 the quality of service options correspond to the specific media file specified by the received input.

Accordingly, Nakatsuyama does not disclose "causing a display of a plurality of quality of service options for selection by a remote user" **after** the media file is specified, and therefore, cannot anticipate claim 1 of the present application.

C. Rejection of Dependent Claims 2-5, 7-10; 12-15, 17-20; 22-25, 27-31

Claims 2-5 and 7-10, 12-15 and 17-20, and 22-25 and 27-31 depend from independent claims 1, 11, and 21, respectively. The Applicant believes, at least for the reasons stated above, that the independent claims 1, 11, and 21 are allowable. Accordingly, the Applicant respectfully submits that claims 2-5, 7-10, 12-15, 17-20, 22-25, and 27-31 are also allowable at least for the reasons stated above with regard to the allowability of claims 1, 11, and 21.

The Applicant also reserves the right to argue additional reasons beyond those set forth above to support the allowability of claims 2-5, 7-10, 12-15, 17-20, 22-25, and 27-31.

II. Radford Does Not Anticipate Claims 1-7, 10-17, 20-27, and 30-31

The Final Office Action rejected claims 1-7, 10-17, 20-27, and 30-31 under 35 U.S.C. 102(a) as being anticipated by Radford. Page 5. Without conceding that Radford qualifies as prior art under 35 U.S.C. 102(a), the Applicant traverses this rejection.

A. Rejection of Independent Claims 1, 11, and 21

The Applicant respectfully submits that Radford does not disclose all the elements of the independent claims 1, 11, and 21. For example, the Final Office Action states that in regard to claims 1, 11, and 21, Radford discloses the portion of claim 1 that states "causing a display of a plurality of quality of service options corresponding to said at least one media file for selection by a remote user" on page 1, para [0008]; page 2, para [00019]; and page 4, para [0029-0031]. But when each of the claims 1, 11, and 21 are read in context of the entire respective claim, it is readily seen that the claims teach "receiving an input specifying at least one media file for transfer via a communication channel in the communication network; **causing a display of a plurality of quality of service options corresponding to said at least one media file for selection by a remote user**; receiving a quality of service selection specifying at

least one of said plurality of quality of service options; and transferring said at least one media file via said communication channel utilizing said quality of service selection."

That is, as explained in the previous section with respect to Nakatsuyama, "causing a display of a plurality of quality of service options corresponding to said at least one media file for selection by a remote user" occurs **after** specifying "at least one media file for transfer." Moreover, the quality of service options displayed correspond to the specific media file selected by the remote user. **Then**, the selected "quality of service selection" is received," and the "at least one media file" is transferred "utilizing said quality of service selection."

Radford does not teach this limitation. Paragraph 8 of Radford states:

> [0008] In one aspect, the invention provides a method for the delivery of streamed data content from a server to a client device over a communications network. According to the method, streamed data content is requested from a listing server and an initial streamed data content file is delivered to the client device from one or more hosting servers. The hosting serves have a plurality of streamed data content files stored therein. The plurality of content files can be stored independently or the plurality of content files stored on the hosting server can be stored as a single file and converted to the appropriate quality level in response to said requesting. The initial streamed data content file is displayed to the client device. **According to the method, a user interface program is implemented and a user interface is displayed on the client device. The program allows the user of the client device to adjust the quality level of the streamed content being displayed.** The quality level can be changed over a wide range of quality levels, including data transfer or bit rates, formats (e.g., audio vs. slideshow vs. video), and image sizes. The user interface program can be stored on the host device or can be downloaded to the client device from a server.

Accordingly, it can be seen that paragraph 8 of Radford does not disclose "causing a display of a plurality of quality of service options **corresponding to said at least one media file** for selection by a remote user" **after** specifying a media file for

transfer, but **before** the media file is transferred. Instead, Radford teaches a program that allows "the user of the client device to adjust the quality level of the streamed content being displayed." That is, Radford teaches transferring a requested media file without displaying a quality of service options. Page 2, paragraph 18. It is only after the media file is being transferred that the user can change quality levels of the media file being displayed.

In other words, **Radford allows quality levels to be adjusted** at the client device **while the media file is being displayed** on the client device. Accordingly, Radford clearly does not disclose "causing a display of a plurality of quality of service options **corresponding to said at least one media file** for selection by a remote user" **after** specifying a media file for transfer, but **before** the media file is transferred.

Neither does paragraph 19 of Radford teach "causing a display of a plurality of quality of service options **corresponding to said at least one media file** for selection by a remote user" **after** specifying a media file for transfer, but **before** the media file is transferred. For example, paragraph 19 states:

> [0019] The initial quality level of the streamed data provided to the user can be fixed by the content provider, can be selected by the user from a number of options, or can be determined automatically. In one embodiment, the initial quality level is determined by a user's preset data transfer preference, that can be, for example, set by the user. In another embodiment, the connection speed of the client is determined by a computer program running on either the client device or on the listing or hosting server. In a preferred embodiment, the client's connection speed to the network (x) is determined 120 by a computer program running on either the client or on the listing server.

Accordingly, it can be seen that paragraph 19 of Radford discloses **setting default quality level** by a user **before specifying any media file** by the user.

Therefore, the Applicant submits that paragraph 19 of Radford does not teach "causing a display of a plurality of quality of service options **corresponding to said at least one media file** for selection by a remote user" **after** specifying a media file for transfer, but **before** the media file is transferred.

Additionally, the paragraphs 29-31 of Radford do not teach "causing a display of a plurality of quality of service options **corresponding to said at least one media file** for selection by a remote user" **after** specifying a media file for transfer, but **before** the media file is transferred. For example, paragraphs 29-31 state:

> [0029] Initial content is then delivered to the client device and displayed to the user. A user interface also is provided. The user interface is displayed to the user along with the content being displayed. The user interface can be implemented on the client device or can be implemented on a server and displayed to the client device. The user interface allows a user to dynamically change the quality level of streamed data received during display of the streamed data. For example, if the network or ISP becomes congested and the quality of the streamed data deteriorates or is marred by interruptions (typically such interruptions are required to cache the streaming data), a user might wish to switch to a lower quality level (i.e., one requiring less bandwidth). The interface can be any suitable interface, including voice activated, graphical, text-based, or any other suitable interface for providing input to a client device. The user can interact with the interface with any suitable input device including, for example, a microphone, a mouse, a trackball, a keyboard or other keypad device, a touch screen, a tablet, an eye-tracking device and any other suitable device known to one of skill in the art. When the user interface is graphical, the interface can be integrated within a browser window, can appear in a separate window, can appear in a pull-down menu, a toolbar, and the like. The user interface can user any means of interacting, including for example, dials, knobs, slide, buttons, text links, and the like.
>
> [0030] An example of a suitable graphical user interface, the Video Quality Management System (VQMS), is shown schematically in FIG. 2. A window 200 is displayed on the client device. The window includes a display area 210. The interface also includes a quality control region 220, having buttons for selecting an appropriate quality level 230-250, and image size buttons 260 for adjusting the size of the video display area. The VQMS interface also has a streaming video control region 270 having

various video controls including buttons for play 310, pause 300, stop 290 and for help 280.

[0031] The user interface allows a user to adjust the quality level of the streamed data being provided from the hosting server or servers. The interface can indicate only the quality levels available (corresponding to files located on the hosting server or servers) or can provide a simple increase/decrease quality functionality. When the streamed data is video data, the interface also can allow the user to specifically adjust the quality level by choosing to change the image size, resolution, or bit rate of the streamed data. In response to an action by the user through the user interface, a second request (or re-request) is generated to the listing server, or to the hosting server directly, for the initiation of delivery of a new file to the client device. The request carries a time stamp or pointer, such that the new data is streamed starting from a position relative to the approximate point when the user selected a desire to change the quality level. In a preferred embodiment, the pointer corresponds to the time position of the streamed data that is being displayed at the time that the user's re-request is initiated. In one embodiment, the system caches the new streamed data while continuing to play the initial streamed data, so that the transition from the initial streamed data to the new streamed data occurs without restarting the video. In another embodiment, the new streamed data is requested to start a few seconds earlier than the point at which the user re-request was made. When quality has deteriorated, this allows for the rebroadcast of a short segment of the data stream. A user's re-request for a change in quality level can result also in a change of network protocol and of the associated decoder/viewer software. For example, a streaming video that is not displaying well may be better displayed as a slide show file. A slide show file can be encoded using a more efficient different file format, such as the MACROMEDIA FLASH.TM. file format rather than in a streaming video format.

Again, it can be seen that paragraphs 29-31 of Radford do not teach "causing a display of a plurality of quality of service options **corresponding to said at least one media file** for selection by a remote user" **after** specifying a media file for transfer, but **before** the media file is transferred. Rather, Radford teaches a user interface that allows the user of the client device to adjust the quality level of the streamed content while the streamed content is being displayed on the client device.

The Final Office Action further states that the third element of the claim, "receiving a quality of service selection specifying at least one of said plurality of quality of service options," is anticipated by Radford in paragraph [0009], lines 1-12; paragraph [0031], lines 9-34. However, this element should be viewed in the context of the entire claim: "receiving an input specifying at least one media file for transfer via a communication channel in the communication network; causing a display of a plurality of quality of service options corresponding to said at least one media file for selection by a remote user; **receiving a quality of service selection specifying at least one of said plurality of quality of service options**; and transferring said at least one media file via said communication channel utilizing said quality of service selection."

The claim clearly states "receiving a quality of service selection specifying at least one of said plurality of quality of service options" that correspond to the specified media file **after** specifying the media file for transfer, but **before** the media file is transferred. Accordingly, the Applicant submits that Radford does not teach the limitations of this element of the claims 1, 11, and 21 when the claims are viewed in entirety.

For example, paragraph 9, lines 1-12 of Radford states:

> [0009] **After display of the initial streamed data content**, a user can adjust the quality level of the content being displayed by re-requesting from the listing server or hosting server or servers, a second streamed data content file having a different quality level from the initial streamed content file. The second streamed data content file corresponds to substantially the same information content as the initially requested data content, but encoded, produced or stored at a different quality level. A user's re-request includes an initiation time pointer corresponding to a position within the initial streamed data file being displayed at the time of said re-request.

It can clearly be seen that paragraph 9 of Radford does not teach "receiving a quality of service selection specifying at least one of said plurality of quality of service options" that **correspond to the specified media file *after*** specifying the media file for transfer, but ***before*** the media file is transferred. Radford instead teaches that the user "can adjust the quality level of the content being displayed." That is, the selected media file is already being transferred before the quality level can be adjusted. This is clearly not the same as "receiving a quality of service selection specifying at least one of said plurality of quality of service options" that correspond to the specified media file **after** specifying the media file for transfer, but **before** the media file is transferred.

Paragraph [0031], lines 9-34 state:

> [0031] In response to an action by the user through the user interface, a second request (or re-request) is generated to the listing server, or to the hosting server directly, for the initiation of delivery of a new file to the client device. The request carries a time stamp or pointer, such that the new data is streamed starting from a position relative to the approximate point when the user selected a desire to change the quality level. In a preferred embodiment, the pointer corresponds to the time position of the streamed data that is being displayed at the time that the user's re-request is initiated. In one embodiment, the system caches the new streamed data while continuing to play the initial streamed data, so that the transition from the initial streamed data to the new streamed data occurs without restarting the video. In another embodiment, the new streamed data is requested to start a few seconds earlier than the point at which the user re-request was made. When quality has deteriorated, this allows for the rebroadcast of a short segment of the data stream. A user's re-request for a change in quality level can result also in a change of network protocol and of the associated decoder/viewer software. For example, a streaming video that is not displaying well may be better displayed as a slide show file. A slide show file can be encoded using a more efficient different file format, such as the MACROMEDIA FLASH.TM. file format rather than in a streaming video format.

Accordingly, Radford teaches in paragraph 31 that the user re-request a file already being displayed, with a time stamp, so that the file can be streamed starting

from around the time stamp point with a different quality level. This is not the same as "receiving a quality of service selection specifying at least one of said plurality of quality of service options" that **correspond to the specified media file *after*** specifying the media file for transfer, but ***before*** the media file is transferred.

The fourth element of each of the claims 1, 11, and 21 should also be viewed in context of the entire respective claim: "receiving an input specifying at least one media file for transfer via a communication channel in the communication network; causing a display of a plurality of quality of service options corresponding to said at least one media file for selection by a remote user; receiving a quality of service selection specifying at least one of said plurality of quality of service options; and **transferring said at least one media file via said communication channel utilizing said quality of service selection.**" Accordingly, it can be seen that the specified file is transferred with the selected quality of service options that correspond to the specified media file, where the quality of service options were selected **before** the media file transfer started.

The Office Action states that Radford anticipates this limitation in paragraph [0009], lines 12-14; and paragraph [0031]. However, the Applicant submits that Radford does not teach this limitation of claim 1, 11, and 21 when each claim is viewed in its entirety. For example, paragraph 9, lines 12-14 states "[a] second data content file is then delivered to the client device from a position determined relative to the time pointer." This is not the same as "transferring said at least one media file via said communication channel utilizing said quality of service selection," where the quality of service options were selected **before** the media file transfer started.

Paragraph 31 states:

> [0031] The user interface allows a user to adjust the quality level of the streamed data being provided from the hosting server or servers. The interface can indicate only the quality levels available (corresponding to files located on the hosting server or servers) or can provide a simple increase/decrease quality functionality. When the streamed data is video data, the interface also can allow the user to specifically adjust the quality level by choosing to change the image size, resolution, or bit rate of the streamed data. In response to an action by the user through the user interface, a second request (or re-request) is generated to the listing server, or to the hosting server directly, for the initiation of delivery of a new file to the client device. The request carries a time stamp or pointer, such that the new data is streamed starting from a position relative to the approximate point when the user selected a desire to change the quality level. In a preferred embodiment, the pointer corresponds to the time position of the streamed data that is being displayed at the time that the user's re-request is initiated. In one embodiment, the system caches the new streamed data while continuing to play the initial streamed data, so that the transition from the initial streamed data to the new streamed data occurs without restarting the video. In another embodiment, the new streamed data is requested to start a few seconds earlier than the point at which the user re-request was made. When quality has deteriorated, this allows for the rebroadcast of a short segment of the data stream. A user's re-request for a change in quality level can result also in a change of network protocol and of the associated decoder/viewer software. For example, a streaming video that is not displaying well may be better displayed as a slide show file. A slide show file can be encoded using a more efficient different file format, such as the MACROMEDIA FLASH.TM. file format rather than in a streaming video format.

This paragraph in Radford again teaches adjusting quality levels of a media file that is already being displayed. The media file will then be sent starting from a specified point. This is clearly not the same as "transferring said at least one media file via said communication channel utilizing said quality of service selection," where the quality of service options were selected **before** the media file transfer started.

Based on at least the foregoing, the Applicant believes the rejection of the claims 1-7, 10-17, 20-27, and 30-31 under 35 U.S.C. § 102(a) has been overcome and respectfully requests that the rejection be withdrawn.

The Final Office Action includes additional text on page 6 that was not present in the January Office Action. However, since this text is used to argue the Examiner's position in the "Response to Amendment/Arguments" section, the Applicant will rebut this in the next section of this brief.

The Applicant reserves the right to argue additional reasons for the allowability of claims 1, 11, and 21.

B. Examiner's Response to Arguments in the Final Office Action

The Final Office Action states that Radford anticipates claim 1. Claim 1 states, "receiving an input specifying at least one media file for transfer via a communication channel in the communication network; causing a display of a plurality of quality of service options corresponding to said at least one media file for selection by a remote user; receiving a quality of service selection specifying at least one of said plurality of quality of service options; and transferring said at least one media file via said communication channel utilizing said quality of service selection."

The Final Office Action states on pages 10-11 that "Radford discloses, wherein the initial request and quality level, e.g. 'input specifying media file for transfer', are set/selected by the user in the data transfer preference as specified in page 2, para [0019], lines 1-6; **before** the initial streamed data file is transferred (see page 2, para [0018], lines 12-14; e.g. which is occurred (*sic*) **after** the media file is specified but **before** the specified

media file is transferred." However, lines 1-6 in paragraph [19] describe how initial quality levels can be set so that a media file that is selected at a later time can be transferred without further user action. For example, Radford states, "It is generally preferred that the user only need perform a single action to initiate streaming content delivery." Page 2, paragraph [18], lines 10-12. Furthermore, lines 12-14 in paragraph [18] state, "In response to the user's request, an initial streamed data file is transferred over the communications network to the client device from a hosting server or servers."

It is clear that Radford does not disclose "causing a display of a plurality of quality of service options **corresponding to said at least one media file** for selection by a remote user" **after** the media file is specified but **before** transferring the specified media file.

Furthermore, the Final Office Action states that "by re-requesting, the user can adjust the quality level" of the re-requested file, and cites fig. 2, page 4, paragraphs [29-31]. Figure 2 shows a display section with various quality level controls around it. Paragraphs [29-31] describe how an initial content is delivered and a user can request change in the quality of the media file **presently being delivered**. Paragraph [31] states that the request for change "carries a time-stamp or a pointer, such that the new data is streamed starting from a position relative to the approximate point when the user selected a desire to change the quality level." Lines 13-16. Accordingly, the Applicant respectfully submits that Radford does not disclose a quality level selected after specifying a media file. Rather, Radford discloses **a default quality level** that is already selected **prior to** specifying the media file, sending the media file using the default quality level, and if a user

decides to change the default quality level, sending a remainder of the file via the new quality level.

This is not the same as claim 1, which states: "receiving an input specifying at least one media file for transfer via a communication channel in the communication network; causing a display of a plurality of quality of service options corresponding to said at least one media file for selection by a remote user; receiving a quality of service selection specifying at least one of said plurality of quality of service options; and transferring said at least one media file via said communication channel utilizing said quality of service selection."

The Final Office Action also states that Radford discloses quality adjustment by a "user in the re-request and provide to the servers for delivering the second data content file to user as desired." Page 11. However, as explained above, Radford discloses a user receiving a media file at a default quality level, and then, if the user chooses to change the quality level, **a remainder** of the same media file being sent at the new quality level. This is not "causing a display of a plurality of quality of service options **corresponding to said at least one media file** for selection by a remote user" **after** the media file is specified, "receiving a quality of service selection specifying at least one of said plurality of quality of service options," and "transferring said media file via said communication channel utilizing said quality of service selection."

Accordingly, the Applicant respectfully submits that Radford does not anticipate claim 1 of the present application.

C. Rejection of Dependent Claims 2-6, 10; 12-17, 20; 22-27, 30-31

Claims 2-6 and 10, 12-17 and 20, and 22-27 and 30-31 depend from independent claims 1, 11, and 21, respectively. The Applicant believes, at least for the reasons stated above, that the independent claims 1, 11, and 21 are allowable. Accordingly, the Applicant respectfully submits that claims 2-6, 10, 12-17, 20, 22-27, and 30-31 are also allowable at least for the reasons stated above with regard to the allowability of claims 1, 11, and 21.

The Applicant also reserves the right to argue additional reasons beyond those set forth above to support the allowability of claims 2-6, 10, 12-17, 20, 22-27, and 30-31.

III. Claims 6, 16, and 26 Are Not Unpatentable Over Nakatsuyama

The Final Office Action rejected claims 6, 16, and 26 under 35 U.S.C. 103(a) as being unpatentable over Nakatsuyama. Page 8.

Claims 6, 16, and 26 depend from independent claims 1, 11, and 21, respectively. The Applicant believes, at least for the reasons stated above, that the independent claims 1, 11, and 21 are allowable. Accordingly, the Applicant respectfully submits that claims 6, 16, and 26 are also allowable at least for the reasons stated above with regard to the allowability of claims 1, 11, and 21.

The Applicant also reserves the right to argue additional reasons beyond those set forth above to support the allowability of claims 6, 16, and 26.

IV. Claims 8-9, 18-19, and 28-29 Are Not Unpatentable Over Radford In View of Nakatsuyama

The Final Office Action rejected claims 8-9, 18-19, and 28-29 under 35 U.S.C. 103(a) as being unpatentable over Radford in view of Nakatsuyama. Page 9.

Claims 8-9, 18-19, and 28-29 depend from independent claims 1, 11, and 21, respectively. The Applicant believes, at least for the reasons stated above, that the independent claims 1, 11, and 21 are allowable. Accordingly, the Applicant respectfully submits that claims 8-9, 18-19, and 28-29 are also allowable at least for the reasons stated above with regard to the allowability of claims 1, 11, and 21.

The Applicant also reserves the right to argue additional reasons beyond those set forth above to support the allowability of claims 8-9, 18-19, and 28-29.

V. Response to Amendment/Arguments in the Final Office Action

A. Combination of Radford and Nakatsuyama

The Applicant believes that the 35 U.S.C. 103(a) rejections have been properly overcome, and therefore the Applicant does not need to address the combination of Radford and Nakatsuyama at this time. However, the Applicant reserves the right to argue reasons on why the combination of Radford and Nakatsuyama is not proper should the need arise.

B. Traversal of Official Notice

The Applicant respectfully requests that the following arguments be included for the sake of completeness. The Applicant did not include these arguments in the Pre-Appeal brief because the response in the Office Action clearly did not provide sufficient

support for the official notice that Radford and Nakatsuyama individually disclosed "generating said received input from a television screen at home."

Nakatsuyama

The Final Office Action states that column 5, lines 39-67 of Nakatsuyama discloses "generating said received input from a television screen at home." However, this section of Nakatsuyama discloses use of a mouse or a keyboard for entering information. A mouse or a keyboard is not generally used with a "television screen at home." Accordingly, the Applicant respectfully submits that Nakatsuyama does not show that "generating said received input from a television screen at home" is common knowledge that is "capable of instant and unquestionable demonstration as being well-known." MPEP § 2144.03(A).

Radford

The Final Office Action states that Radford discloses "generating said received input from a television screen at home" in paragraphs [0029-0031], paragraph [0016] lines 3-7, and paragraph [0028].

Paragraph [0028] mentions "television" to state that "a 30 second television commercial could be encoded [at various bit rates] ... Likewise, the television commercial could be encoded as an audio-only file." Lines 4-10.

Lines 3-7 of paragraph [0016] state that client devices are "any devices capable of recording or displaying streamed digital data. Suitable client devices include ... digital televisions, and the like."

Paragraphs [0029-0031] discloses use of a "microphone, mouse, trackball, keyboard or other keypad device, a touch screen, a tablet, an eye tracking device" for interacting with a user interface to enable a user to "change the quality level ... during display of the streamed data." Paragraph [0029], lines 6-21. These devices mentioned in paragraph [0029] are not generally used with a "television screen at home."

Accordingly, the Applicant respectfully submits that the cited portions of Radford do not disclose "generating said received input from a television screen at home."

Hence, the Applicant respectfully submits that Radford does not show that "generating said received input from a television screen at home" is common knowledge that is "capable of instant and unquestionable demonstration as being well-known." MPEP § 2144.03(A).

CONCLUSION

For at least the foregoing reasons, the Applicant respectfully submits that claims 1-31 are allowable. Accordingly, the Applicant kindly requests a reversal of the Examiner's rejection and issuance of a patent on the application.

The Commissioner is hereby authorized to charge $510 (to cover the Brief on Appeal Fee) and any additional fees or credit any overpayment to the deposit account of McAndrews, Held & Malloy, Ltd., Account No. 13-0017.

Respectfully submitted,

Date: January 20, 2008

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CLAIMS APPENDIX
(37 C.F.R. § 41.37(c)(1)(viii))

1. A method, for controlling transfer of media content in a communication network, the method comprising:

receiving an input specifying at least one media file for transfer via a communication channel in the communication network;

causing a display of a plurality of quality of service options corresponding to said at least one media file for selection by a remote user;

receiving a quality of service selection specifying at least one of said plurality of quality of service options; and

transferring said at least one media file via said communication channel utilizing said quality of service selection.

2. The method according to claim 1, comprising transferring at least a portion of specified parameters to a first communication device coupled to the communication network.

3. The method according to claim 2, comprising configuring at least a portion of said communication channel by a second device utilizing said transferred at least a portion of said specified parameters.

4. The method according to claim 2, wherein said first communication device is at least one of a broadband headend and a media server.

5. The method according to claim 1, comprising generating said received input specifying said at least one media file for transfer via at least one of a media guide, channel guide and a device guide.

6. The method according to claim 1, comprising generating said received input from a television screen within a home.

7. The method according to claim 1, comprising at least one of queuing and buffering at least a portion of said at least one media file during said transferring.

8. The method according to claim 1, comprising presenting a cost for transferring said at least one media file via said communication channel utilizing said quality of service selection.

9. The method according to claim 8, comprising varying said cost depending on said quality of service selection.

10. The method according to claim 1, wherein said quality of service selection for said transfer of said at least one media file comprises at least one of: a resolution, color content, encoding type, encoding rate, compression type, display size, a bandwidth to be utilized for transfer of said transfer, a time to be utilized for said transfer, and a cost for said transfer.

11. A computer-readable medium having stored thereon, a computer program having at least one code section for controlling transfer of media content in a communication network, the at least one code section being executable by a computer for causing the computer to perform steps comprising:

receiving an input specifying at least one media file for transfer via a communication channel in the communication network;

causing a display of a plurality of quality of service options corresponding to said at least one media file for selection by a remote user;

receiving a quality of service selection specifying at least one of said plurality of quality of service options; and

transferring said at least one media file via said communication channel utilizing said quality of service selection.

12. The computer-readable medium according to claim 11, comprising code for transferring at least a portion of specified parameters to a first communication device coupled to the communication network.

13. The computer-readable medium according to claim 12, comprising code for configuring at least a portion of said communication channel by a second device utilizing said transferred at least a portion of said specified parameters.

14. The computer-readable medium according to claim 12, wherein said first communication device is at least one of a broadband headend and a media server.

15. The computer-readable medium according to claim 11, comprising code for generating said received input specifying said at least one media file for transfer via at least one of a media guide, channel guide and a device guide.

16. The computer-readable medium according to claim 11, comprising code for generating said received input from a television screen within a home.

17. The computer-readable medium according to claim 11, comprising code for at least one of queuing and buffering at least a portion of said at least one media file during said transferring.

18. The computer-readable medium according to claim 11, comprising code for presenting a cost for transferring said at least one media file via said communication channel utilizing said quality of service selection.

19. The computer-readable medium according to claim 18, comprising code for varying said cost depending on said quality of service selection.

20. The computer-readable medium according to claim 11, wherein said quality of service selection for said transfer of said at least one media file comprises at least one of: a resolution, color content, encoding type, encoding rate, compression type, display size, a bandwidth to be utilized for transfer of said transfer, a time to be utilized for said transfer, and a cost for said transfer.

21. A system for controlling transfer of media content in a communication network, the system comprising:

at least one processor that receives an input specifying at least one media file for transfer via a communication channel in the communication network;

said at least one processor causing a display of a plurality of quality of service options corresponding to said at least one media file for selection by a remote user;

said at least one processor receives a quality of service selection specifying at least one of said plurality of quality of service options; and

said at least one processor transfers said at least one media file via said communication channel utilizing said quality of service selection.

22. The system according to claim 21, wherein said at least one processor transfers at least a portion of specified parameters to a first communication device coupled to the communication network.

23. The system according to claim 22, wherein said at least one processor configures at least a portion of said communication channel by a second device utilizing said transferred at least a portion of said specified parameters.

24. The system according to claim 22, wherein said first communication device is at least one of a broadband headend and a media server.

25. The system according to claim 21, wherein said at least one processor generates said received input specifying said at least one media file to transfer via at least one of a media guide, channel guide and a device guide.

26. The system according to claim 21, wherein said at least one processor generates said received input from a television screen within a home.

27. The system according to claim 21, wherein said at least one processor at least one of queues and buffers at least a portion of said at least one media file during said transferring.

28. The system according to claim 21, wherein said at least one processor presents a cost for transferring said at least one media file via said communication channel utilizing said quality of service selection.

29. The system according to claim 28, wherein said at least one processor varies said cost depending on said quality of service selection.

30. The system according to claim 21, wherein said quality of service selection for said transfer of said at least one media file comprises at least one of: a resolution, color content, encoding type, encoding rate, compression type, display size, a bandwidth to be utilized for transfer of said transfer, a time to be utilized for said transfer, and a cost for said transfer.

31. The system according to claim 21, wherein said at least one processor is at least one of a media processing system processor, a media management system processor, a computer processor, a media exchange software processor and a media peripheral processor.

EVIDENCE APPENDIX
(37 C.F.R. § 41.37(c)(1)(ix))

(1) United States Patent No. 6,253,246 ("Nakatsuyama"), entered into record by the Examiner in the January 17, 2007 Office Action.

(2) United States Patent Application Publication No. 2002/0144276 ("Radford"), entered into record by the Examiner in the January 17, 2007 Office Action.

(37 C.F.R. § 41.37(c)(1)(x))

The Appellant is unaware of any related appeals or interferences.